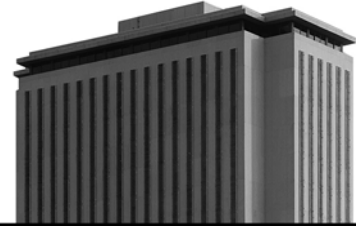




# LEGISLATIVE ISSUE BRIEFS



## Public Works/Utilities/Transportation and Road Activities

**SB 2148** (Haridopolos) was amended in the Senate Community Affairs Committee to state only that a city, county, or special district may not own or operate an asphalt plant or certain cement plants. All other provisions were removed from SB 2148. **CS/HB 683** (Weatherford) substantially alters the manner by which local governments perform public construction works and transportation projects. The bill amends section 255.20, Florida Statutes, to restrict the use of city employees or city owned equipment for, and to broaden the circumstances when local governments are required to competitively award, public construction works. The bill also amends current law applicable only to county transportation activities (section 336.41, Florida Statutes) and makes the provisions applicable to cities, which will restrict the use of city employees/equipment and subject a substantial amount of city transportation activities to mandatory bidding requirements. **CS/HB 1399** (Aubuchon), a large transportation bill, was amended in the House Economic Expansion and Infrastructure Council to include provisions restricting city use of city employees/equipment for city transportation related projects. The bills will substantially, negatively affect city public works, utilities and transportation/road departments.

The bills make the following substantial changes:

1. Under current law, a city may choose to have “repair or maintenance” activities performed without having to go through a competitive bid or award process. **CS/HB 683** requires “repair or maintenance” activities on existing public facilities be subject to a competitive bid or award process. Repair or maintenance activities may be performed “in-house” with city employees using city owned equipment and such activities would now be required to go to bid. Also, repair or maintenance activities typically must be performed in short time frames, which could be adversely affected under a mandatory bid process.
2. Under current law, a city may decide it is in its best interest to have city employees using city owned equipment perform construction or public works projects without having to go through a competitive bid or award process. Under **CS/HB 683**, a city must now go through a competitive bid or award process. Should all bids exceed the city’s cost estimate by 10% or more, before the city may utilize its own employees and equipment for public projects, the city must hold a public hearing and produce factual findings that the city’s cost estimate is reasonable in the private market and that the cost estimate was developed using various listed factors. These “factual findings” are subject to judicial challenge. The new process provided by the bill will add substantial costs and delays to performing public works projects.

3. City transportation related projects are made subject to a competitive bidding process currently applicable only to counties. Under CS/HB 683 and CS/HB 1399, a city must competitively award to a private sector contractor all construction, reconstruction, or repair of roads or bridges, including resurfacing and mineral seal coating. A city may use its own employees: for construction and maintenance in emergency situations; and for construction, reconstruction, and repair of roads and bridges provided no single project exceeds \$250,000 in value exclusive of materials used. City employees may also construct sidewalks, curbs, accessibility ramps, and perform other activities incidental to roads and bridges if the cost is less than \$400,000 per project. All materials used for projects performed by city employees must be purchased or furnished from a commercial source with the exception of government-owned material pits for sand, shell, gravel, and rock existing prior to January 1, 2008. Also, a city is prohibited from owning or operating an asphalt plant or a portable or stationary concrete batch plant with an independent mixer. A city may perform routine maintenance as authorized by law, including grading/shaping dirt roads. All of these new bidding requirements relating to city transportation projects are in addition to the current law on public works bidding requirements, s. 255.20, Florida Statutes, (which also covers transportation projects). This new process will substantially, negatively affect any city transportation/road department.
4. Current law provides that cities are not required to go through a competitive bid or award process when a funding source for the project will be diminished or lost because the time required to competitively award the project exceeds the time within which the funding source (for example a grant) must be spent. CS/HB 683 states that local governments may use this exception only if it has not materially contributed to a delay in using the funding source.
5. CS/HB 683 prohibits a public construction contract from containing any provision that limits or waives the rights of a contractor to recover costs or damages for project delays if the delay is caused by the government or any other entity that the government has a contract with (such as architects, engineers, etc.). The bill also subjects decisions of the local government concerning additional compensation or time to a contractor to broad judicial review.

**Status:** CS/HB 683 and CS/HB 1399 are in the House Policy and Budget Council. SB 2148 is in the Senate Transportation Committee.

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